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2-26-91
February 19, 1991

Office of the Clerk
Court of Appeal for the State
of California
Second District -- Division 3
300 S. Spring Street
North Tower, Room 228
Los Angeles, California 90013

Re: Church of Scientology of California and
Mary Sue Hubbard, Appellants, v. Gerald
Armstrong, Defendant. Bent Corydon, Appellee.
Civ. No. B 038975

Dear Sir or Madam:

After briefing was complete in this case, defendant Gerald Armstrong was permitted to file a brief out of time. No provision was made for appellants to respond to such brief. Accordingly, I am submitting this letter brief to respond to several points contained in Mr. Armstrong's belated brief. Please circulate this letter to the judges who will be hearing the appeal, which is presently scheduled for hearing on February 20, 1991.

First, Mr. Armstrong presents no legal authorities for his argument but rather attempts to introduce voluminous new evidentiary materials which were not in the record below. These materials are contained in Mr. Armstrong's 388 page appendix, and are referred to throughout his brief. The materials clearly should be disregarded, as they are not part of the record on this appeal.

Second, Mr. Armstrong repeatedly argues that the sealing of the court file was not an integral part of the overall settlement of the case. He refers to the "Mutual Release of All Claims and Settlement Agreement" which he points out does not contain any language concerning the sealing of the files. He fails to note, however, several critical points: (1) paragraph 14 of the Settlement Agreement states "the parties shall execute and deliver all documents and perform all further acts that may be reasonably

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necessary to effectuate the provisions of this agreement"; (2) on December 8, 1986, after Mr. Armstrong executed the Settlement Agreement but three days before the Church executed the Settlement Agreement, both parties signed the "Stipulated Sealing Order" which is Exhibit E to the Appendix of Appellants on this appeal. The Stipulated Sealing Order recites that it is entered "Pursuant to and as a provision of a Settlement Agreement of the parties hereto..." (Id., p.1); (3) as we have emphasized in our briefs, at the hearing before Judge Breckenridge on December 11, 1986, counsel for both Mr. Armstrong and the Church emphasized that the stipulated sealing order was an integral part of the settlement of the case, and Judge Breckenridge signed the sealing order based upon such representations; (4) the Church did not sign and execute the Settlement Agreement until December 11, 1986, following Judge Breckenridge's signing of the stipulated sealing order; and (5) in a subsequent pleading filed by Mr. Armstrong's attorney on Mr. Armstrong's behalf in this very court in this very appeal on December 27, 1988, Mr. Armstrong stated "Numerous materials in the Armsrong case were sealed at the behest of both parties as part of the settlement of the case. That sealing was an intrical [sic] part of the settlement, which settlement should not be undone." See Exhibit A, hereto, para 2, p.3.

Thus, it is readily apparent that the stipulated sealing order was a necessary pre-condition to the settlement of this case, pursuant to which Mr. Armstrong received hundreds of thousands of dollars in settlement. Indeed, Mr. Armstrong was quite pleased with the settlement at the time it was enacted. He obtained substantial remuneration as a result -- funds which he has kept and used even while now choosing to contest the settlement. Mr. Armstrong and his counsel were well informed of the full provisions and ramifications of the Settlement Agreement. He benefited substantially from it; and it is dissembling for him to now claim lack of knowledge and attempt to escape from his prior agreement.

Third, Mr. Armstrong is incorrect in suggesting that the settlement agreement imposed a confidentiality requirement on the Church. There is no such provision and Mr. Armstrong does not cite to one.

Fourth, Mr. Armstrong argues, like Mr. Corydon, that the appellants have no privacy interest in the files which remain under seal. Mr. Armstrong relies on nothing new, and thus in response we rely primarily upon our previously filed briefs, which emphasize that the remaining files contain extensive testimony and references to highly private and confidential matters concerning Mrs. Hubbard, the Church, and its members, whose privacy the Church has standing to protect.

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The same is true with respect to Mr. Armstrong's public interest argument. We note that the record does not contain evidence concerning the life of Mr. Hubbard; the evidence pertaining to Mr. Hubbard was admitted for the sole purpose of showing Mr. Armstrong's state of mind on that and other subjects. The truth or falsity of that evidence was not litigated. It was precisely because of the inherent unreliability of such evidence that the evidence was admitted only for a limited purpose. The public interest in access to evidence of Mr. Armstrong's state of mind is not compelling, Mr. Armstrong's views to the contrary notwithstanding.

Very truly yours,

Eric Lieberman *HL*

Eric M. Lieberman
Counsel for Appellants

EML/sl

cc: Toby Plevin, Esq.
Mr. Gerald Armstrong